IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 149 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL BHIMJIBHAI BHOVANBHAI

Versus

PATEL RANCHHOD NATHU-DECD. THRO'HEIRS AND L.R.

Appearance:

MR DU SHAH for Petitioners

Mr.Mulia, for MR RC JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. The petitioners herein are the original opponents 1 and 2/2 to 2/5 in the application which was filed before the Assistant Judge, Junagadh by the present respondents. Respondents 1/1 to 1/6 herein are the heirs

of the original plaintiffs. On behalf of the opponent No.1 herein, a suit was filed, being Special Civil Suit No.29 of 1975, against the present petitioners and rest of the opponents, for recovery of Rs.22,901/-, in the Court of Second Joint Civil Judge (S.D.), at Junagadh on 20th September, 1993. The said suit was dismissed by the trial court, against which on behalf of the opponent No.1 herein, an appeal was preferred in the District Court at Junagadh, but since there was a delay, application for condonation of delay was filed, being Civil Miscellaneous Application No.10 of 1994. On behalf of the present petitioners, the said application was resisted mainly on the ground that the suit in question being a special civil suit, in which valuation was more than Rs.10,000/- and since the claim was Rs.22,901/-, the appeal against the order of the trial court would lie straight away to the High Court and not to the District Court. However, the learned Extra Assistant Judge, Junagadh, allowed the application for condonation of delay and directed the Registry to number the said civil appeal accordingly. The aforesaid order is challenged by the original opponents 1 and 2/2 to 2/5 by filing this Revision Application.

2. At the time of hearing of this Revision Application, it was argued by Mr.Shah, learned Advocate for the petitioners, that since appeal itself was not competent before the District Court, there was no question of condoning the delay and that the learned appellate Judge, therefore, should have dismissed the delay condonation application on the ground that the same was not maintainable and the remedy of the respondent No.1 was to file an appeal in the High Court, instead of approaching the Assistant Judge.

3. Against the aforesaid argument, learned counsel Mr.Mulia, for Mr.Jani, submitted that the appeal in the District Court was competent in view of the amendment in the Bombay Civil Courts Act by way of Gujarat Amendment Act 19 of 1993.

4. After considering the arguments of both the sides, I am of the opinion that so far as the question of condonation of delay is concerned, it cannot be said that the learned appellate Judge has committed any error of law or of jurisdiction in condoning the delay, though, of course, Mr.Shah has argued that when the appeal itself was not competent, the learned Judge could not have condoned the delay. But, in my view, whether the appeal is maintainable before the appellate court or not is required to be considered only after the same is

registered by the Registry of the District Court. After the delay is condoned, therefore, naturally, the Court has to consider that question in the appeal itself. If the Court is of the opinion that the appeal is not maintainable before the District Court, naturally, the consequential order for returning the appeal memo for presentation to the proper court can be passed. On the other hand, if the Court is of the opinion that the appeal is maintainable, then, naturally, the same is required to be considered on merits. At this stage, therefore, it is premature to adjudicate the aforesaid question and the same is required to be considered by the appellate Judge, before whom the appeal will now be registered and the same will be decided. I am not expressing any opinion one way or the other whether the appeal before the appellate court is competent or not and it will be open for the appellate Court to adjudicate that question. Under these circumstances, while confirming the order of the appellate court, by which the delay is condoned, I direct that as and when the appeal is taken up for hearing, the appellate court will decide the question, by way of preliminary determination, whether the appeal before the appellate court is competent or not. Ultimately, if the court is of the opinion that the appeal is competent before the appellate court, naturally, the same will be required to be decided on its own merits. It is, therefore, clarified that this question is kept open for decision by the appellate court, and it will be open for both the sides to agitate the same before the appellate court about the maintainability of the appeal. At present, I am concerned with the question of condonation of delay and I do not find any substance in this revision application and it cannot be said that the learned Judge has committed any jurisdictional error in condoning the delay.

This Revision Application is required to be rejected. The C.R.A. is accordingly rejected subject to the observations made hereinabove. Rule is discharged. Interim relief shall stand vacated. There shall be no order as to costs.

Since the proceedings are old, the appellate court may take the aforesaid appeal for hearing immediately, preferably within a period of two months from today and decide the same in accordance with law, keeping in mind the observations made hereinabove.

12th January, 2001 (P.B. Majmudar, J.)

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(apj)